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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/579,694 05/26/00 HAYEK

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EXAMINER

HENLEY III, R

ART UNIT

PAPER NUMBER

1614

DATE MAILED:

01/25/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/579,694

Applicant(s)

Michael G. Hayek

Examiner

Ray Henley

Group Art Unit
1614



☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1035 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-10 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☒ Claim(s) 1-6 is/are allowed.

☒ Claim(s) 7-9 is/are rejected.

☒ Claim(s) 10 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4-5

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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CLAIMS 1-10 ARE PRESENTED FOR EXAMINATION

Applicant's Information Disclosure Statements filed August 25, 2000 and November 20, 2000 have been received and entered into the application. As reflected by the attached, completed copies of form PTO-1449, the cited references have been considered.

Claim Objections

I Claim 9 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim, amend the claim to place the claim in proper dependent form, or rewrite the claim in independent form. The recitation of an intended host does not provide for any further physical limitation to the composition as defined in claim 7.

II Claim 10 is objected to as depending from a rejected base claim (see below), but is otherwise in condition for allowance.

Claim Rejection - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Shapira (U.S. Patent No. 5,290,605) who teach a composition that may contain vitamin E, lutein and beta-carotene. See the abstract and column 2, lines 8, 9, 25 and 26.

The functional recitations in the present claims, i.e., intended use and host, are noted, but fail to provide a patentable distinction over the prior art because such recitations do not impart any physical feature to the composition that is not present in the prior art composition.

Claim Rejection - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shapira, as above.

The difference between the above and applicant's claimed subject matter lies in that the patentee fails to highlight the presently claimed ingredient amounts.

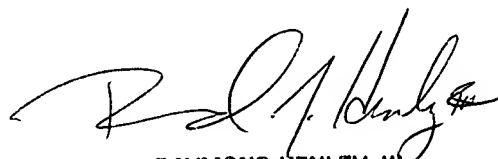
However, to the skilled artisan, applicant's claimed subject matter would have been obvious because the determination of the optimum ingredient amounts to employ would have been a matter well within the purview of the skilled artisan.

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Allowable Subject Matter

Claims 1-6 are deemed to be in condition for allowance because the prior art fails to teach or suggest the presently claimed methods for enhancing the immune response, optimizing immune cells in dog or optimizing vaccine recognition in a dog.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ray Henley whose telephone number is (703) 308-4652.


RAYMOND HENLEY, III
PRIMARY EXAMINER
GROUP 1200

Henley; rjh
January 24, 2001